

Archer v All Am. School Bus Corp.

2016 NY Slip Op 30008(U)

January 5, 2016

Supreme Court, New York County

Docket Number: 156447/2012

Judge: Manuel J. Mendez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ

PART 13

Justice

ELIJAH ARCHER AN INFANT BY HIS MOTHER AND NATURAL GUARDIAN, SHARIBA MILLS, AND SHARIBA MILLS INDIVIDUALLY,

INDEX NO. 156447/2012
MOTION DATE 12-2-2015

Plaintiffs,

-against-

MOTION SEQ. NO 001
MOTION CAL. NO _____

ALL AMERICAN SCHOOL BUS CORP., RAINBOW TRANSIT, INC., IVAN PRINCE, CHARLOTTE HARPS, THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF EDUCATION, and the BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK.

Defendants.

The following papers, numbered 1 to 6 were read on this motion for summary judgment.

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED

1 - 3
4 - 5
6

Cross-Motion: Yes No

Upon a reading of the foregoing cited papers, it is Ordered, that defendants' motion for summary judgment is granted to the extent of dismissing the claims asserted by plaintiffs against defendants RAINBOW TRANSIT, INC., CHARLOTTE HARPS, THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF EDUCATION, and the BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, the motion is denied as against defendants ALL AMERICAN SCHOOL BUS CORP. and IVAN PRINCE.

Plaintiff is a 12-year-old child that brings this action to recover for personal injuries sustained on February 28, 2012 when he was struck by a motor vehicle. Plaintiff alleges that on the date of the accident he was dropped off by a yellow school bus approximately one block away from the shelter where he lived. The bus matron exited the bus with plaintiff, then walked towards the shelter in order to advise plaintiff's mother about his misbehavior on the bus. After exiting the school bus, but prior to the bus moving, plaintiff re-entered the bus to retrieve his scarf. Plaintiff then walked on the sidewalk away from the shelter so that the children on the bus would not see him walk into the shelter.

While plaintiff walked away from the shelter, the bus drove to the front of the shelter, double parked in front of the shelter and waited for the matron to exit. Plaintiff then walked towards the shelter, saw the school bus and tried to walk inside in order to retrieve a paper he had left on it. Plaintiff claims that the school bus driver signaled to him to walk around the bus and re-enter the bus through the driver's side door, which was on the traffic moving side of the street. Plaintiff was struck by a motor vehicle as he approached the driver's side door of the bus.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE _____ FOR THE FOLLOWING REASON(S):

Ivan Prince was the school bus driver at the time plaintiff was struck by the motor vehicle. Prince testified that he normally picked up and dropped off plaintiff approximately half a block from the shelter. Plaintiff was normally unaccompanied when being picked up and dropped off. Prince had "expressed permission" from plaintiff's mother to drop plaintiff off prior to reaching the shelter.

On the date of the accident plaintiff was misbehaving on the bus. Prince dropped off plaintiff prior to reaching the shelter and the school bus matron, Charlotte Harps, exited the bus with plaintiff. After reaching the sidewalk, plaintiff released Harps' hand and began running up and down the block. After reaching the sidewalk, Harps advised Prince that he was blocking the lane for a fire truck, and then she proceeded to walk towards the shelter while Prince moved the school bus and double-parked in front of the shelter.

Once double-parked in front of the shelter, Prince locked the school bus doors, turned off the engine, stood up from his seat, and turned around to watch over the students that remained on the school bus while Ms. Harps was inside the shelter. Prince claims that he does not know if plaintiff re-entered the school bus after he initially exited the school bus with Harps, and that he did not see plaintiff re-enter the school bus. Prince did not see plaintiff in the street or being struck by a motor vehicle. Prince learned of plaintiff's accident when he reached the school bus depot.

Harps testified that after she initially exited the bus with plaintiff, he was supposed to go inside the shelter, but he did not. After Harps and plaintiff reached the sidewalk, Harps walked to the shelter. Harps does not know if plaintiff re-entered the school bus, or where and how plaintiff was struck by a motor vehicle. Upon exiting the shelter, Harps saw plaintiff being attended by two adults. She proceeded to board the school bus. Harps did not know that plaintiff was struck by a motor vehicle until she reached the school bus depot at the end of her route.

Defendants now move for summary judgment arguing that they did not owe any duty of care towards plaintiff because at the time of his accident, plaintiff had already safely disembarked the school bus and had left the area where he had been safely dropped off.

In order to prevail on a motion for summary judgment, the proponent must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence, eliminating all material issues of fact (*Klein v. City of New York*, 81 N.Y. 2d 833, 652 N.Y.S. 2d 723 [1996]). Once the moving party has satisfied these standards, the burden shifts to the opponent to rebut that prima facie showing, by producing contrary evidence, in admissible form, sufficient to require a trial of material factual issues (*Amatulli v. Delhi Constr. Corp.*, 77 N.Y. 2d 525, 569 N.Y.S. 2d 337 [1999]).

The general rule is that a "common carrier owes a duty to an alighting passenger to stop at a place where the passenger may safely disembark and leave the area." Once the passenger safely disembarks, no further duty occurs (*Smith v. Sherwood*, 16 N.Y.3d 130, 133, 944 N.E.2d 637, 919 N.Y.S.2d 102 [2011]).

Defendants the CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF EDUCATION, and the BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK make a prima facie showing of entitlement to summary judgment. "Schools are under a duty to adequately supervise the students in their charge and they will be held liable for foreseeable injuries proximately related to the absence of adequate supervision. However, a school's duty to protect its students from negligence is coextensive with and concomitant to its physical custody and control over its students. Therefore, once students leave their school's orbit of authority, parents are free to resume custodial control and the school's custodial duty ceases" (Banks v. New York City Dept. of Educ., 70 A.D.3d 988, 989-990, 895 N.Y.S.2d 512, 513 [2nd Dept., 2013]).

Plaintiff was outside the control and the orbit of authority of the CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF EDUCATION, and the BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK and under the control of the school bus company, driver, and matron. Plaintiff fails to rebut this prima facie showing.

Defendants RAINBOW TRANSIT, INC., and CHARLOTTE HARPS make a prima facie showing of entitlement to judgment as a matter of law. RAINBOW TRANSIT, INC. employs Harps. On the date of the accident, Harps' duty to plaintiff ended once he safely disembarked the school bus and reached the sidewalk. Harps left plaintiff on the sidewalk as she normally did pursuant to a permission slip signed by plaintiff's mother allowing plaintiff to be dropped off by himself on the sidewalk. Harps then walked to the shelter, entered the shelter, and did not exit until after plaintiff had been struck by a motor vehicle. RAINBOW TRANSIT, INC., and CHARLOTTE HARPS may not be held liable for plaintiff's injuries under a common law duty imposed on common carriers or under general negligence. Plaintiff fails to rebut this prima facie showing.

Defendants ALL AMERICAN SCHOOL BUS CORP. and IVAN PRINCE fail to make a prima facie showing of entitlement to summary judgment. The conflicting testimony of plaintiff and Prince creates issues of fact as to whether plaintiff had re-boarded the school bus thereby triggering the common law duty of care imposed on common carriers; and whether Prince negligently instructed plaintiff to walk in front of, and around the school bus onto the side of the street with moving traffic, just prior to plaintiff being struck by a motor vehicle.

Accordingly, it is ORDERED, that defendants' motion for summary judgment dismissing this action is granted to the extent of dismissing plaintiffs' claims against defendants RAINBOW TRANSIT, INC., CHARLOTTE HARPS, THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF EDUCATION, and the BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, and it is further,

ORDERED, that the causes of action asserted in the Complaint against defendants RAINBOW TRANSIT, INC., CHARLOTTE HARPS, THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF EDUCATION, and the BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK are severed and dismissed, and it is further,

ORDERED, that the motion for summary judgment dismissing the causes of action asserted in the Complaint against defendants' ALL AMERICAN SCHOOL BUS CORP. and IVAN PRINCE is denied, and it is further,

ORDERED, that the caption is amended to read as follows:

ELIJAH ARCHER AN INFANT BY HIS MOTHER
AND NATURAL GUARDIAN, SHARIBA MILLS,
AND SHARIBA MILLS INDIVIDUALLY,

Plaintiffs,

-against-

ALL AMERICAN SCHOOL BUS CORP., and
IVAN PRINCE,

Defendants.

, and it is further,

ORDERED, that the moving defendants serve a copy of this Order with Notice of Entry upon plaintiff, the General Clerk's Office (Room 119), and the County Clerk (Room 141B), who, upon service of a copy of this Order with Notice of Entry, are directed to amend the caption and the Court's records, and it is further,

ORDERED, that the Clerk of the Court enter judgment accordingly.

Dated: January 5, 2016

Enter:

MANUEL J. MENDEZ

J.S.C.

MANUEL J. MENDEZ

J.S.C.

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE